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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the combined sixth and seventh periodic reports of Norway

Addendum

Information received from Norway on follow-up to the concluding observations*

[22 November 2013]

1. The Norwegian Ministry of Justice and Public Security refers to the concluding observations of the United Nations Committee of Torture at its 1123rd meeting on 16 November 2012 (CAT/C/SR.1123) and hereby sends the requested follow-up information in response to the Committee's recommendations related to solitary confinement, detention of foreigners, and missing minors and trafficking, as contained in paragraphs 11, 15, 16 and 22 in chapter C of the report (Principal subjects of concern and recommendations). The Committee has requested that the follow-up information is provided by 23 November 2013.

(11) Solitary confinement

The Committee's observations and recommendations:

> *The Committee regrets the widespread and, in some cases, prolonged use of solitary confinement, which might constitute a violation of the Convention. While noting with concern that almost one third of the cases concerned prisoners on remand, the Committee regrets that detailed statistics on the use and length of solitary confinement are not yet available. The Committee also expresses its concern about the existing legal basis for the use of solitary confinement, as it is not formulated with sufficient precision, leaving the possibility for highly discretionary decisions, which prevents the possibility of administrative or judicial supervision. The Committee regrets that detained are not always appropriately informed on the grounds for imposition of solitary confinement and that the systems for control and review do not appear to ensure that they enjoy appropriate legal protection (arts. 2, 11 and 16).*

* The present document is being issued without formal editing.

In order to ensure full conformity with the Convention and taking into account the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Committee urges the State party to:

(a) Reduce the use of solitary confinement to the situations that are strictly necessary;

(b) Amend its legislative framework in order to limit the use of solitary confinement to exceptional circumstances;

(c) Guarantee due process rights to prisoners in decisions concerning solitary confinement;

(d) Evaluate and assess the existing practice of the use of solitary confinement and review the existing mechanisms for control and legal remedies;

(e) Establish a system in order to provide detailed statistics on the use of solitary confinement and disclose them publicly.

Norway's follow-up information to paragraph 11:

2. For practical reasons, we have chosen to answer this paragraph in opposite order, starting with item e).

Regarding the Recommendation in item e):

3. The Norwegian Directorate for Correctional Services has instigated a process to ensure better overview over the use of wholly or partly exclusion of prisoners from the company of other prisoners. A new IT-tool for statistics and analysis, ASK, will be used to generate the relevant statistics. The first version of ASK, which will give access to prison places/prisoners-ratio, the foreign prisoners rate, etc., was made accessible for a group of pilot-users on 17 October 2013. The use of solitary confinement is the next prioritised area for ASK. The Directorate estimates that a solution should be in place during first semester of next year.

4. In the meantime, manual calculations on the use of exclusion are being made in every prison on the same day; three times a year. The numbers are being reported to the Regional Administrations of the Correctional Services, as well as to the Directorate and to the Ministry of Justice and Public Security. Three calculations have been made so far. The next is due on 14 November. The said calculations will serve as basis for preliminary statistics, while waiting for the new IT-tool to become operable. This matter is being closely monitored.

Regarding the Recommendation in item d):

5. When the statistics mentioned under item e) are in place, the existing practice of the use of solitary confinement will be evaluated and assessed. The results of the evaluations and assessments will be decisive for whether a review of the existing mechanisms for control and legal remedies will be deemed necessary.

Regarding the Recommendation in item c):

6. The Act relating to procedure in cases concerning the public administration of 10 February 1967 (The Public Administration Act) applies when the Correctional Services take decisions, cf. the Act relating to the execution of sentences etc. of 18 May 2001, No. 21(The Execution of Sentences Act), Section 7, first paragraph. A prisoner, hence, has the right to state his opinion before a decision concerning him or her is being taken. Pursuant to the same Section, litra b, "The proceedings may be oral if necessary for reasons of time.

This also applies to administrative decisions and information of such decisions that is to be given to convicted persons or prisoners."

7. As to possibilities for challenging decisions taken by the Correctional Services on restrictions or partial or total isolation/exclusion imposed upon prisoners, reference is made to Norway's combined sixth and seventh periodic report (CAT/C/NOR/6-7), item 6 [b].

Regarding the Recommendation in item b):

8. The expected outcome of the ongoing processes, mentioned above, is better and more reliable statistics regarding the use of exclusion of prisoners from the company of other prisoners. When the results can be ascertained, the eventual need for amendments in the legal framework will be reviewed.

9. As for prisoners under the age of 18, amendments have already been passed. In June 2011, the Government proposed a bill which, inter alia, introduces a ban on exclusion as a disciplinary sanction against juveniles. There are still powers of exclusion in relation to screening for preventive purposes, but the basis for exclusion of minors is considerably restricted. The duty to report was, concurrently, also made stricter. The bill was adopted by an unanimous Parliament in December the same year. Awaiting necessary regulations, these amendments have, however, not yet entered into effect.

Regarding the Recommendation in item a):

10. Reference is made to litra b. We agree that exclusion should not be used unless it is strictly necessary. It is, however, difficult to assess whether exclusion is being used excessively before the statistics are applicable. If the results indicate that exclusion is being used to a wider extent than intended, this issue will also have to be reviewed.

(15) Detention of foreign nationals and non-refoulement

The Committee's observations and recommendations:

> *The Committee expresses its concern regarding the use of lengthy detention for asylum-seekers who enter the State party undocumented. The committee also regrets the lack of full legal protection for persons fleeing States due to generalized violence who can neither show that they are individually at risk, nor are considered to be at risk of torture if returned, as article 2 of the Aliens Act requires an individualized risk in order for persons to qualify for subsidiary protection in the State party (arts. 3, 11 and 16).*
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> *The State party should consider reducing the use and length of detention for asylum-seekers who enter the State party undocumented. The State party should also consider refraining from returning foreign nationals to States in situations of internal armed conflict or generalized violence, on humanitarian grounds.*

Norway's follow-up information to paragraph 15:

11. Persons who are at risk of being subjected to torture or other serious abuse have a right to protection, according to the Norwegian Immigration Act article 28 (1) b, and to the European Convention on Human Rights article 3. This right applies irrespective of whether the risk is caused by generalized violence, armed conflict or individual targeting. Furthermore, The Norwegian Immigration Act includes an absolute prohibition against refoulement, even if the person in question is excluded from refugee status or considered to be a danger to national security (section 73 of the Immigration Act). In addition, if the requirements for protection status are not met, the Immigration authorities will always

assess whether there is a reason for granting a residence permit based on humanitarian grounds.

12. Asylum seekers are not routinely detained, and may not be detained solely due to the fact that they arrive in Norway without any ID documents. However, a foreign national may be arrested and detained if she or he does not cooperate in clarifying her/his identity, or if there are specific grounds for suspecting that a false identity has been given. A foreign national may not be detained if detention would constitute a disproportionate intervention in light of the nature of the case and other factors. Detention is decided by a District Court, for a maximum of four weeks at a time. The total time in detention cannot exceed 12 weeks, unless there are particular reasons to the contrary.

13. In the first eight months of 2013, the average duration of detention was eight and a half days. The average duration of detention on ID-related grounds (lack of cooperation/false identity) was approximately 24 days. The median duration of detention was approximately one day and ten days respectively. In 2012, only 7 % of the persons arrested pursuant to the Immigration Act were arrested on ID-related grounds. More than 90 % of the arrests took place in order to carry out returns.

(16) Detention of foreign nationals and non-refoulement

The Committee's observations and recommendations:

The Committee regrets that the legal safeguards prescribed by law are not always guaranteed to all asylum-seekers and foreign nationals pending expulsion, such as the right to information concerning their rights in a language they understand and the right to free legal aid in the case of expulsion. The Committee notes with concern the publishing of a consultation paper by the State party on the possibility to restrict further the right to free legal aid (arts. 3,11 and 16)

In order to fulfill its obligations under article 3 of the Convention, the State party should guarantee all necessary legal safeguards to ensure the rights of persons facing expulsion or return. The State party should also provide appropriate legal aid to foreigners in all expulsion cases if necessary to safeguard their rights and establish procedures to ensure that foreign nationals are informed of their rights in a language they understand.

Norway's follow-up information to paragraph 16

14. The rights of foreign nationals are secured by a thorough process with the right to appeal, as well as the possibility to request to reverse a decision when new information is provided and the possibility to ask for a postponed execution of a decision etc.

15. The existing system regarding legal aid is considered satisfactory, which was explained during the oral examination in Geneva in November 2012, with particular attention to the fact that all asylum-seekers and many expelled persons have a right to free legal aid.

16. As a main rule, foreign nationals have a right to free legal aid without an assessment of their assets in cases concerning expulsion and revocation of a permit. This does not apply, however, in expulsion cases due to a penal sanction for a criminal offence. Furthermore, asylum seekers have a right to free legal aid if they appeal a negative administrative decision made by the Directorate of Immigration (UDI) to the Immigration Appeal Board (UNE). Regarding applications from unaccompanied asylum-seeking minors, free legal advice shall be given without an assessment of their assets also in the first instance.

17. Those who do not have the right to free legal advice can apply for legal aid according to ordinary principles in the Act concerning free legal aid. This includes those who are being subject to return without being expelled. The legal aid system was subject to an evaluation in October 2012, and the recommendations from this evaluation are currently being assessed at the Norwegian Ministry of Justice and Public Security.

(22) Missing minors and trafficking

The Committee's observations and recommendations:

> *The Committee has received reports of NGOs raising concerns about the number of unaccompanied minors who have not returned to asylum centres in the State party, including the 68 children that were still missing from these centres on 31 August 2012. The Committee is also concerned about the provision in the Immigration Regulations (Section 8-8) which grants unaccompanied asylum-seeking minors between the ages of 16 and 18 years a temporary permit that expires at the age of 18, as this may encourage minors to leave the asylum centres before their permit expires. Furthermore, while welcoming the different measures taken to combat human trafficking such as the new Plan of Action against Human Trafficking launched by the government in December 2010, the Committee notes with regret that trafficking in persons still remains a problem in the State party, especially concerning girls (arts. 2 and 16).*
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> *The State party should strengthen its efforts to prevent minors from going missing from asylum centres by allocating sufficient resources to the immigration authorities to prevent and investigate every case of missing minors. The police should be provided with all the necessary resources to investigate and prosecute cases of trafficking.*

Norway's follow-up information to paragraph 22:

18. Norway offers a place to stay at a reception center to all asylum seekers, but they are not obliged to stay there. The fact that children disappear from reception centers is of great concern to the authorities, since it is assumed that some of these children might be victims of trafficking, and leave the center to unite with their traffickers.

19. A new provision was introduced in the Child Welfare Act in August 2012 to allow unaccompanied minors to be held for up to six months in a closed institution without their consent, in cases where the child is at risk of being subject to trafficking and in order to prevent the child being contacted by traffickers. This provision can only be used if it is not possible to protect the child through other measures.

20. It is of high importance that the local police, the reception center as well as the child welfare authorities have sound cooperation routines when a child disappears from a center. The routines must include an agreement on when the center should report to the police that a child has left the center, and also make sure that the police are provided with all relevant information. The Directorate of Police has a responsibility to follow the development and implementation of such routines at the reception centers. Cooperation teams have been set up in certain police districts.

21. It must be underlined that some children disappear at a stage when very little information about them is available, often before an asylum interview has been conducted. This makes it virtually impossible for the police to carry out an investigation on their whereabouts.

22. Concerning police investigations of trafficking cases in general, we experience that the complexities of cases, with far-reaching international connections, make it necessary to limit certain investigations.

23. A recent positive development has been the willingness and ability of police districts to identify small-scale cases of trafficking and successfully investigate and prosecute them. As an example, in September 2013, a man was sentenced to prison for trafficking, after exploiting his underage children as beggars during the summer of 2013. (The case is under appeal.) Furthermore, in October 2013, a man was sentenced to prison for trafficking after exploiting his underage children as drug carriers in May and June 2013 (the case is under appeal). These cases show that awareness about trafficking has spread throughout the police and prosecution system, following several trainings and meetings that have been organized from the Directorate of Police.

24. The Norwegian Ministry of Justice and Public Security would also like to inform the committee that on 27 June 2013, Norway ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (cf. paragraph 25 of the Committee's concluding observations). The Optional Protocol was signed by Norway on 24 September 2003.

25. The Parliamentary Ombudsman has been designated as the national preventive mechanism according to Article 3 of the Protocol. Following this designation, the Act concerning the Storting's Ombudsman for public administration has been modified, and its modifications became effective on 1 July 2013.

26. We have noted that Norway's next periodic report is expected by 23 November 2016, and it will be answered according to the list of issues that we will receive from the Committee.